

kondnerdr.txt

17 come up with your rationale in a minute.
 18 MR. PELS: I'm going to object. Let him
 19 answer however he needs to answer it. I think
 20 he's trying to get there. You keep cutting him
 21 off.
 22 BY MR. SIMPSON:
 23 Q I'll let you give the rationale. Just give
 0056 me the numbers. Just start with the numbers.
 1 A Okay. You've got a 504 and you've got a
 2 (b)(1).
 3 Q All right. what language in (b)(1) says you
 4 can't use vinyl-coated gypsum?
 5 A There's none in there that says you can't
 6 use it. It just doesn't work.
 7 Q Where does it say it doesn't work in
 8 504-(b)(1)?
 9 MR. PELS: Objection.
 10 THE WITNESS: Oh, come on. Go back to 303.
 11 You get water in it. You're trapping water in
 12 there. How is it performing?
 13 BY MR. SIMPSON:
 14 Q Sir, I'm going to have an expert that will
 15 give chapter and verse on what HUD code violations are
 16 followed in this case, and this is your opportunity to
 17 tell me if you think 504-B1 is violated.
 18 MR. PELS: Objection.
 19 THE WITNESS: Whoa, whoa. Back up a minute.
 20 504-1 says right here, "Exterior walls shall have
 21 a vapor barrier not greater than one perm
 22 installed on living space side of the wall."
 23
 0057 That's allowed. In that climate it doesn't work,
 1 but you're given -- here you've got -- it's wide
 2 open to you. If you want to do something else,
 3 go ahead.
 4 BY MR. SIMPSON:
 5 Q My point is this: The way the HUD code is
 6 written, a manufacturer is permitted to build a home
 7 under (b)(1) and site it in the humid and fringe zone
 8 climate under the HUD code, correct?
 9 A That may well be, but it doesn't perform.
 10 Q But you would agree with me that (b)(1)
 11 permits it?
 12 A (b)(1) permits it, but it also permits you
 13 to use something that works. This doesn't work.
 14 Q Have you ever seen a (b)(2) wall?
 15 A I don't know that I have or I have not,
 16 quite frankly. I mean it has to do with where you put
 17 your pressure envelope. I mean you could put the
 18 pressure envelope on the outside if you wanted, and
 19 then you wouldn't get this going through it. Or you
 20 could go ahead, you could take your vinyl siding and
 21 you could seal it up and do a good job of sealing it
 22 up to try to minimize the amount of hot humid air
 23
 0058 going in, but . . .
 1 Q Do you know where the opaque envelope on
 2 this home is?
 3 A On this particular home?
 4 Q Yes, sir.
 5 A It's got to be that vinyl siding or the
 6 vinyl covering.
 7

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8 Q You sure about that?
 9 A Well, it's the only thing -- it's the lowest
 10 permeability.
 11 Q Do you know what the perm of the sheeting is
 12 in this home?
 13 A The vinyl-covered? Less than one.
 14 Q No. The vinyl coating is not a sheeting.
 15 Do you know what a sheeting is?
 16 A Oh, you mean on the outside. Okay. No, I
 17 don't, but I can look in Bonney's report. He's seen
 18 it. He's been down there.
 19 Q What method of wall design is Bonney
 20 selecting as the replacement wall?
 21 MR. PELS: Objection.
 22 THE WITNESS: I'll have to go look.
 23

0059

1 BY MR. SIMPSON:
 2 Q Okay.
 3 A Looks to me like -- he doesn't say what kind
 4 of sheetrock, but I -- it's got to be permeable. It
 5 doesn't say it's vinyl-covered. He's not using it.
 6 He knows he's not using it, because that's what caused
 7 it to fail.
 8 Q Do you know what wall design his cure would
 9 comply with?
 10 MR. PELS: Objection; form and foundation,
 11 and I believe this is an irrelevant line of
 12 questioning, but I'll let him answer.
 13 MR. SIMPSON: Well, I mean it's your design
 14 fix, so I just want to know if this guy knows
 15 what it complies with.
 16 MR. PELS: Same objection.

BY MR. SIMPSON:

17 Q The fact is you don't know, do you,
 18 Dr. Kondner?
 19 A I'd have to look at the code here and figure
 20 it out for what he's using here. He's obviously got a
 21 high permeability going through there so the house is
 22 going to breathe. I mean what goes in is going to go

0060

1 out, so he'd probably have to use -- he might get into
 2 some ventilation.
 3 Q So you think this is a (b)(3) wall?
 4 MR. PELS: Objection. Again, Mr. Kondner is
 5 not being offered to render an opinion on
 6 Mr. Bonney's remedy, but if you want to ask him
 7 about it, it's fine.

BY MR. SIMPSON:

8 Q I do.
 9 A Well, if he doesn't do anything on the
 10 siding, he's still got the moisture coming in, and if
 11 he does not have the vinyl-covered wallboard, that
 12 moisture could go right on through, and it may not
 13 need anything at all.
 14 Q So is this a (b)(2) wall?
 15 MR. PELS: Objection.
 16 Don't answer unless you know, Doctor.
 17 MR. SIMPSON: I want to know what his
 18 judgment is. He relied on this report, so I want
 19 to hear what he has to say, Jon.
 20 THE WITNESS: Well, I didn't rely on this
 21 report to make a fix.
 22

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23
0061

1 BY MR. SIMPSON:
2 Q Well, do you know whether his fix is going
3 to work or not?
4 A Knowing Roy Bonney, I would think it would.
5 He's a very reliable person.
6 Q I'm asking: Do you know whether his wall
7 design is going to work?
8 A I think it will.
9 Q And what wall design does it comply with
10 under the HUD code, under the 504?
11 MR. PELS: Objection; form and foundation,
12 relevancy. It implies it has to.
13 BY MR. SIMPSON:
14 Q You don't think it has to comply with the
15 HUD code?
16 MR. PELS: No, I think there's
17 alternative construction --
18 MR. SIMPSON: Jon, Jon, please don't coach
19 the question.
20 MR. PELS: Well, Scott, you're asking me.
21 MR. SIMPSON: No. I'm asking him.
22 MR. PELS: Oh, well --
23 MR. SIMPSON: So you can object, but let's

0062

1 not coach. This is federal court.
2 MR. PELS: All right, Scott, but I was
3 interposing my objection. I thought you were
4 asking me.
5 THE WITNESS: You did ask him.
6 BY MR. SIMPSON:
7 Q Dr. Kondner, what HUD code section does
8 Mr. Bonney's repair comply with, if any?
9 A Well, it's a -- it's a variation of 1. Uh,
10 where you're not restricting it to 1 perm, not greater
11 than 1 perm, you got a lot of perms. You got a very
12 highly permeable animal out there. So in a sense, if
13 it's not the 1 and it's not an unventilated wall
14 cavity and it's not a ventilated 3, it's got to be an
15 exception then, which is I think you call 4.
16 Q So you think he's built a B4 wall in his
17 report?
18 MR. PELS: Same objection.
19 You can answer if you know.
20 THE WITNESS: I think he probably has.
21 Anyway, it's permeable and it breathes.
22 BY MR. SIMPSON:
23 Q Where is the vapor retarder on his design?

0063

1 MR. PELS: Objection.
2 Answer if you know.
3 THE WITNESS: It may be on the outside. I
4 don't know. What does he say; seal it up?
5 BY MR. SIMPSON:
6 Q You don't know, do you?
7 A I'd have to look in here.
8 MR. PELS: Can you give him a minute to
9 look.
10 Scott, do you mind if we take a two-minute
11 bathroom break?
12 MR. SIMPSON: As long as you don't talk to
13 the witness.

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MR. PELS: I promise you I will not talk to him except as to weather. Not related to this case.

MR. SIMPSON: All right.

(Whereupon, a short recess was taken.)

BY MR. SIMPSON:

Q Do you know where, if at all, he has a vapor barrier in this design?

MR. PELS: Objection.

You can answer.

0064

THE WITNESS: I don't recall. He's probably got a vapor barrier underneath on the ground, but -- the only thing I see in here is referring to the ground vapor barrier, he says, back on Page 4, "The required ground vapor barrier is installed in the Murphy home."

BY MR. SIMPSON:

Q So you don't know where his vapor barrier is that he prepared?

A I don't know that he has one.

Q So can you say with any authority what wall design he's complying to?

MR. PELS: Objection.

You can answer.

THE WITNESS: It looks like he's got an exception. I assume that would be a type 4.

BY MR. SIMPSON:

Q Do you know what a serious defect is?

A A serious defect? There's a definition of that in here, which leaves the home impaired, but I could look up the actual wording for you if you want, but not necessarily unsafe.

Q Without looking, do you have any

0065

expertise --

A Now, wait a minute. I don't memorize this thing. If you want me to answer it, I'll answer it here.

Q Let me ask you this question before you look at it. Do you know the difference between a serious defect and a defect without looking at it?

A I'd have to look at it here.

Q Don't look at it yet. Do you know the difference between a defect and a non-compliance without reading it?

A I'd have to look at it.

Q Do you know the difference between a non-compliance and an imminent safety hazard without looking at it?

A They're all here.

Q Do you know the difference without looking at it?

MR. PELS: Objection; asked and answered.

THE WITNESS: I don't memorize these things. I told you that before. If you want to ask me about it, ask me about it, but I'll go right to it here.

0066

BY MR. SIMPSON:

Q Well, I'm very certain you're literate. I'm wanting to know --

A Well, I don't know that you do from the

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5 questions you've asked.

6 MR. PELS: Objection; characterization.

7 Literate? He's at the section if you want him to
8 read it or not.

9 MR. SIMPSON: No, I think I've established
10 my point.

11 MR. PELS: Objection. If this is a
12 question, you may ask him.

13 BY MR. SIMPSON:

14 Q 504; would you agree with me that there is
15 nothing in 504 that prevents the use of an internal
16 vapor barrier? In fact, (b)(1) expressly permits it,
17 correct?

18 MR. PELS: Objection; asked and answered.

19 You can answer it again.

20 THE WITNESS: It's under section 504, and it
21 says in here, "Condensation control and
22 installation of vapor retarders." Well,
23 condensation control, this house has not had

0067
1 condensation control, and yet it's a type 1 wall,
2 but it says, "Condensation control and
3 installation of vapor barriers." Now, I'll be
4 damned if that's condensation control when you've
5 got water on the inside of the wall. You tell me
6 this.

7 BY MR. SIMPSON:

8 Q Sir, other than the title, is there --

9 A Oh, what do you mean "other than the title"?
10 This is what it's about.

11 Q Let's not argue. Just answer my question.
12 Is there any standard or measure in 504 that
13 distinguishes between condensation in a wall that
14 performs and one that does not?

15 A The manufacturer is entitled to use 504-2B
16 if he so desires, but in that area of the country it
17 does not work. It does not meet the condensation
18 control that I think they're obviously looking for in
19 the title. How many times have I got to tell you the
20 same thing?

21 Q Where in the code does it say what the
22 standard of care is with regard to condensation
23 control?

0068
1 MR. PELS: Objection.

2 You can answer again.

3 THE WITNESS: I think I'd go back to
4 probably 303.

5 BY MR. SIMPSON:

6 Q All right. Well, let's turn to that. In
7 your judgment, do you think 303 is violated?

8 A Yes, 303B, construction, "All construction
9 methods shall be in conformance with accepted
10 engineering practices to ensure durable, liveable and
11 safe housing, and shall demonstrate acceptable
12 workmanship reflecting journeyman quality of work of
13 the various trades," unquote, and then down below it
14 says, "New materials and methods: Any new material or
15 method of construction not provided for in this
16 standard, and any material or method of questionable
17 suitability proposed for use in the manufacture of the
18 structure shall nonetheless perform in conformance to
19 the requirements of this standard."

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20 So you can try what you want, you can
21 deviate, but you still got to meet it. You still got
22 to control the moisture. You can't let it accumulate
23 behind a wall. That's poor engineering practice to do

0069 1 this down there in that climate.

2 Q Who gets to decide what's good engineering
3 practice? Wouldn't you agree that HUD gets to decide
4 that?

5 MR. PELS: Objection.

6 THE WITNESS: No, I think it's the
7 performance. It's the owner. If the damn thing
8 doesn't work and their walls eventually fall
9 apart, who takes it on the chin? The owner, not
10 the manufacturer, but he should.

11 BY MR. SIMPSON:

12 Q What role does the DAPIA play in determining
13 what is generally accepted engineering practices?

14 A He's supposed to give an opinion on it.
15 He's supposed to say whether it functions or not. He
16 could be wrong and apparently is.

17 Q Do you know if 504 has any geographical
18 limitations at all with regard to any of the wall
19 designs?

20 A You mean limitations in the sense that they
21 don't work or they do work? In a northern climate it
22 may work fine.

23 Q Do you know whether the HUD code limits wall

0070 1 designs to specific geographies?

2 MR. PELS: Objection. Same objection.

3 You can answer.

4 BY MR. SIMPSON:

5 Q Let me ask it this way: Is there any limit
6 to where you can build a B4 wall?

7 A Well --

8 MR. PELS: Objection.

9 BY MR. SIMPSON:

10 Q You don't know off the top of your head?

11 A I don't think it is unless it doesn't
12 perform. It's got to perform. What the hell good is
13 building it if it doesn't perform? What's the good of
14 selling it if it doesn't perform? You got to perform.
15 It's a performance spec.

16 Q Sir, just answer my question. Is there any
17 limit to where you can build a B4 home?

18 A I'd have to look in the manual here.

19 Q You don't know without looking?

20 MR. PELS: Objection.

21 THE WITNESS: Limit where you can't build a
22 B4?

0071 1 BY MR. SIMPSON:

2 Q Yeah, according to HUD.

3 A Well, I'd have to look. It's an exception.

4 Q Sir, without looking, do you know?

5 A I don't remember. I don't memorize this
6 damn thing. It's an inch thick, and you want me to
7 memorize it? That's absurd, ludicrous. You're
8 ludicrous on this.

9 Q Without looking, without looking, I want to
10 ask you some questions --

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11 A I looked at this when I did my work, and my
12 opinions are based on my looking at this, and I think
13 I'm entitled to look at the documents that I used.

14 Q Sir, don't look at it right now, please.

15 MR. SIMPSON: Jon, instruct him not to look
16 at it.

17 MR. PELS: Let me see what your questions
18 are first, because I want to interpose an
19 objection. He said he would need to look, and
20 you keep asking the same question again.

21 THE WITNESS: You're trying to test my
22 memory on this, whether I've memorized it. Get
23 off it, will you?

0072 1 MR. PELS: Dr. Kondner is not going to look
2 at his book. Go ahead and ask your question,
3 Scott.

4 BY MR. SIMPSON:

5 Q Do you know if any of the wall designs in
6 504 have any geographical limitation at all?

7 MR. PELS: Objection.

8 You can answer if you know.

9 THE WITNESS: I'm not sure. I'd have to
10 look it up.

11 BY MR. SIMPSON:

12 Q Other than your problem with 504 and 303
13 that we just discussed, do you find any other HUD code
14 violated in the Murphy home?

15 MR. PELS: Scott, if he needs to, I'd like
16 him to be able to look at the HUD code now.

17 BY MR. SIMPSON:

18 Q Well, do you say it in your report?

19 MR. PELS: Do you want to get your report
20 out?

21 THE WITNESS: It's here somewhere.

22 MR. PELS: I'm happy to have him answer
23 without looking at the HUD code first if you

0073 1 want. I don't care.

2 MR. SIMPSON: You know, he's been on this
3 case for a year. He ought to be able to tell me
4 what HUD code provisions are violated.

5 MR. PELS: Objection; move to strike.

6 THE WITNESS: I think we've just been
7 through it. 504-B1, which -- and you're entitled
8 to put vinyl on the inside of the wall, which
9 this has, but you've got to have condensation
10 control. This house doesn't have it, and it's
11 right -- it's the heading of that section. So
12 obviously you don't have it. You should have
13 used something else.

14 BY MR. SIMPSON:

15 Q Any other HUD code?

16 A Well, then you get back to the performance
17 in 303.

18 Q Any other?

19 MR. PELS: May he refer to his HUD code?

20 MR. SIMPSON: All day long.

21 MR. PELS: All right. Go ahead and why
22 don't you look through that.

23 THE WITNESS: I want to see what he's saying

0074 1 here.

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2 MR. PELS: Okay.
3 (Exhibit No. 2 was marked for identification
4 and attached to the deposition transcript.)

5 BY MR. SIMPSON:

6 Q Sir, can you not tell me without reading
7 your whole report whether it violates any HUD
8 provision?

9 MR. PELS: Objection; form and foundation.
10 You can answer.

11 THE WITNESS: I am not sure whether or not
12 it would be restricted in here under a waiver.
13 What was the question again?

14 MR. PELS: Scott, can you restate your
15 question.

16 THE WITNESS: I forgot what the question
17 was.

18 BY MR. SIMPSON:

19 Q Other than 504 and 303, are you rendering
20 any opinion that this home violates any other HUD code
21 provision?

22 MR. PELS: Objection; form and foundation.
23 I don't think that's been his testimony, but you

0075

1 can answer.

2 MR. SIMPSON: Well, I mean if you'll
3 stipulate --

4 THE WITNESS: Well, I think that's enough.
5 There may be something else, but I don't recall
6 at the time.

7 MR. PELS: Scott, I think I would stipulate
8 and have stipulated -- and you tell me if you
9 want me to answer your question, because I
10 believe that was directed at me. We're not
11 saying you violated the, quote-unquote, "HUD
12 code." I believe he says it complies with
13 504(b)(1), but ultimately it's not performing is
14 his testimony. I don't think we're here to say
15 that you're violating the HUD code. We know it's
16 got a sticker, but we're saying it's not
17 performing, and I think that's been consistent,
18 if that helps.

19 BY MR. SIMPSON:

20 Q Is there a HUD code section, Doctor, that
21 would capture the non-performing aspect?

22 A Well, hold on a second. This is a difficult
23 question, because it's not performing. Now, these

0076

1 things like non-compliance here refers to a safety
2 standard. I think that there's potential at least for
3 mold growth to the extent that you would have a safety
4 hazard. If you go over here where it says "failure to
5 conform, an imminent safety hazard," but it says,
6 related to the standards, "a serious defect or
7 non-compliance." I think the best you can probably do
8 is say that it's just not performing, and the
9 performance I think goes back to the 303.

10 Q Are you saying that because it's not
11 performing, this home violates 303?

12 MR. PELS: Objection.
13 You can answer.

14 THE WITNESS: The wording in here is very
15 tricky on this stuff. It says, in 303(b),
16 "All" -- that means everything -- "All

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17 construction methods shall be" -- no leeway --
18 "in conformance with accepted engineering
19 practices." And by God, putting that vinyl on
20 the inside is not an accepted engineering
21 practice.

22 BY MR. SIMPSON:

23 Q Are you familiar with the history of the HUD
0077

1 code as it relates to wall design?

2 A No, not really.

3 Q Do you know what, if any, investigations or
4 studies HUD has undertaken with respect to wall design
5 in its determination that (b)(1) walls can be sited in
6 the humid and fringe zone climate?

7 MR. PELS: Objection to form and foundation.
8 You can answer.

9 THE WITNESS: No, I'm not aware of that
10 history, but I do know this, that the literature
11 clearly over and over and over again points out
12 that's poor engineering practice.

13 BY MR. SIMPSON:

14 Q Doctor, you didn't write the report that you
15 cite in this case; somebody gave it to you, didn't
16 they?

17 MR. PELS: Objection.

18 THE WITNESS: What are you talking about?

19 BY MR. SIMPSON:

20 Q Your report.

21 A My report?

22 Q Yes, sir.

23 A I certainly wrote every damn bit of it.
0078

1 Q You basically took the Beasley report and
2 just copied it and turned it into a report.

3 A No, sir.

4 MR. PELS: Objection.

5 THE WITNESS: Let me go down the line on
6 this. Let me clarify this. I had an
7 introduction. I told you what it was. The hot,
8 humid climate, problems. I gave you the
9 locations. Climatic. I took it right out of the
10 HUD stuff. I even put it in here, so you know
11 what it is, you know where it is, and that's Page
12 2, and then I went and talked about performance.
13 I wrote every bit of this myself.

14 BY MR. SIMPSON:

15 Q Sir, you just testified you didn't know
16 anything about the history, but your report talks
17 about the history, so how do you --

18 MR. PELS: Objection.

19 THE WITNESS: I detail the history of the
20 design features, the stresses and everything else
21 that goes with it. Hell, no. This is widely
22 known. What's in here is widely known and is in
23 the literature. A pile of it's in the
0079

1 literature.

2 BY MR. SIMPSON:

3 Q Go to Page 3 of your report. You see the
4 last paragraph there?

5 A Yeah.

6 Q Where did you get that information?

7 A I looked at the literature. You got a whole

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8 history of it. I mean it's article after article
9 after article in the literature about this.

10 Q My point is: The lawyers gave you the
11 literature; you didn't give it to them.

12 MR. PELS: Objection. Move to strike.

13 BY MR. SIMPSON:

14 Q Correct? Correct?

15 A Basically.

16 Q Okay.

17 A But this is not rocket science. Let me tell
18 you something. If you know anything about vapor
19 phases of water, this is elementary, and that's
20 physics, that's physics, and physics is part of
21 engineering.

22 Q Let me ask you some physics questions. What
23 is the second law of thermodynamics?

0080

1 A The second law of thermodynamics? Offhand I
2 don't recall it in a technical sense.

3 Q Can you define the term "hydroscopic
4 isotherm"?

5 A Hydroscopic isotherm. An isotherm is going
6 to be a line of constant value and probably a
7 temperature isotherm.

8 Q Do you know without guessing what
9 hydroscopic isotherm is?

10 A Hydroscopic would simply be frozen vapor.

11 Q Do you know what that term means in relation
12 to these cases?

13 MR. PELS: Objection. Can you expand on
14 that, what do you mean by "relation," Scott?

15 BY MR. SIMPSON:

16 Q Do you have any way to relate the term
17 "hydroscopic isotherm" to anything that's going on in
18 these cases?

19 MR. PELS: Objection.

20 THE WITNESS: Well, I assume you're looking
21 at the country and you're looking at where the
22 isotherms are and where those temperature
23 variations take place.

0081

1 BY MR. SIMPSON:

2 Q Are you guessing?

3 A That's as far as I know it. I use it many
4 times in things like frost heave.

5 Q What is the chemical composition of gypsum?

6 A I offhand don't know the chemical
7 composition of gypsum.

8 MR. PELS: Is that a physics question,
9 Scott?

10 MR. SIMPSON: Actually that's a chemistry
11 question.

12 THE WITNESS: Right.

13 MR. PELS: I know. I thought you were
14 asking physics.

15 THE WITNESS: Do you know it, Scott?

16 BY MR. SIMPSON:

17 Q Actually, I do. Do you know if gypsum has
18 got any water molecules in it?

19 A I don't know the chemical composition of
20 gypsum.

21 Q Do you know how much water is too much water
22 for a gypsum board?

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23 A 25 to 40 percent sure is.
 0082
 1 Q where are you getting that from?
 2 A Well, that's common sense. That's
 3 experience.
 4 Q Other than common sense and experience, are
 5 you aware of any standard that the gypsum industry --
 6 A I think we've already been over that. I'm
 7 not aware of it offhand. I could probably find it and
 8 look it up if I wanted to, but I also know that those
 9 are the values that Parks has measured in this unit.
 10 Q What is -- how well do you know Mr. Parks?
 11 A I don't know him very well at all. I've
 12 only met him a few times.
 13 Q Do you know anything about his background?
 14 A I think we've been over this. You told me
 15 he wasn't even a high school graduate or something to
 16 that effect.
 17 Q Do you know, independent of what I've said,
 18 anything about his background?
 19 A No. All's I know is he's got a lot of
 20 experience and he does what he does well.
 21 Q But you only met him a couple of times and
 22 you don't know his background, right?
 23 A That's right.

0083
 1 Q And do you know anything more about Bonney
 2 than Parks?
 3 A Well, I've seen Bonney more often, and I've
 4 worked with Bonney and we've gone out in the field
 5 together. Of course, I've gone out in the field with
 6 Parks, too, but as far as I know, Bonney has
 7 experience in the industry. He was a dealer. He
 8 installed these things. He sold these various units.
 9 It's got to mean something.
 10 Q Do you know anything specific about his
 11 background?
 12 A You mean like the question you asked me,
 13 whether I had ever been arrested?
 14 Q Sir, do you know anything about his
 15 education?
 16 A No, I don't.
 17 Q Do you know anything specific about his work
 18 history?
 19 A Other than the fact that he's performed
 20 within the industry and he's been used as an expert by
 21 the industry.
 22 Q Other than that, do you know anything about
 23 him?

0084
 1 A Well, I know he's had a business where he
 2 sold the units, where he repaired the units, where he
 3 sited the units, things of that nature.
 4 Q And you've relied on both of these people
 5 for your report, correct?
 6 A Yes.
 7 Q Is there any other standard of care that
 8 you're aware of that's violated with this home?
 9 MR. PELS: Objection.
 10 You can answer.
 11 THE WITNESS: I don't think so.
 12 BY MR. SIMPSON:
 13 Q Let me see if I understand how you wrote

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14 your report. when did these lawyers first hire you?
15 A Let's see. It was for the Deese situation,
16 and that must have been in September or October
17 of '06.

18 Q By the way, are you aware that it's been
19 established that the Deese home doesn't even have
20 vinyl in it?

21 MR. PELS: Objection; form and foundation.

22 THE WITNESS: I don't know that.

23

0085

1 BY MR. SIMPSON:

2 Q Would your opinions on Deese change if it
3 turned out it had paper --

4 MR. PELS: Objection; form and foundation.

5 MR. SIMPSON: Let me finish my question.

6 BY MR. SIMPSON:

7 Q Would your opinion in Deese change if you
8 discovered that the wallboard had a paper coating
9 instead of a vinyl coating?

10 MR. PELS: Objection; form and foundation.

11 I don't think you have a basis to ask that
12 question.

13 THE WITNESS: Well, if I recall -- and I
14 don't have any of those documents with me -- it
15 was vinyl-covered, or, if it had something else
16 on there, it had to have a low permeability.

17 BY MR. SIMPSON:

18 Q If hypothetically speaking the Deese home
19 had a wallboard with 20 perms or greater permeability,
20 would your opinion about it change?

21 MR. PELS: Objection.

22 You can answer.

23 THE WITNESS: Well, that would be a very

0086

1 permeable wallboard.

2 BY MR. SIMPSON:

3 Q You'd like that wall, wouldn't you?

4 A Probably, because the moisture could go
5 right through it and dissipate.

6 MR. PELS: Scott, is that what the perm
7 rating came back on on Deese?

8 MR. SIMPSON: You'll have to wait to talk to
9 Greg.

10 (Discussion was held off the record.)

11 BY MR. SIMPSON:

12 Q Dr. Kondner, have you ever built a HUD code
13 home in your life?

14 A No, I haven't.

15 Q Have you ever repaired a HUD code home in
16 your life?

17 A Not that I recall.

18 Q Have you done anything from a DAPIA
19 standpoint on a HUD code home in your life?

20 A No, I don't think so.

21 Q Have you ever seen a home built in a factory
22 anywhere in the world in a HUD code setting?

23 A I can't recall it.

0087

1 Q You've never even seen a mobile home built,
2 right?

3 A Not in a factory, no.

4 Q And sitting here today, you don't know what

kondnerdr.txt

5 the walls in the Murphy home are made of, right?

6 MR. PELS: Objection; form and foundation.

7 Asked and answered.

8 You can answer again.

9 THE WITNESS: The only thing I can go by is
10 the reports by Bonney and Parks. I have not
11 personally seen it.

12 BY MR. SIMPSON:

13 Q Have you ever published anything in the HUD
14 code arena?

15 A Well, I did develop an equation for having
16 to do with the siting or proper siting of manufactured
17 housing.

18 Q Right, that had to do with your Maryland
19 site. I'm talking about --

20 A Well, that equation can be applied to any
21 site.

22 Q My question is --

23 A Whether it's in Alabama or in Maryland or

0088

1 anywhere else.

2 (Discussion was held off the record.)

3 BY MR. SIMPSON:

4 Q Do you have any health problems that would
5 prevent you from testifying today?

6 A No, no. I got a broken rib that I'm
7 carrying right now, but go ahead. That's fun. And
8 I've got a cold and I'm not walking. I've got no
9 cartilage in my knee, but go ahead.

10 Q Have you ever rendered a design opinion as
11 to manufacturing standards in a manufactured home?

12 A I don't think so. Could be. I've been
13 around a long time.

14 Q Do you know anything about HUD's oversight
15 or audit process in DAPIA and IPIA work?

16 A No, I don't.

17 Q Do you know what IBTS is?

18 A IBTS? Offhand, no.

19 Q I think you've testified previously you
20 don't have any experience in the manufacturing housing
21 industry itself, do you?

22 MR. PELS: Objection; form and foundation.

23 You can answer.

0089

1 THE WITNESS: Manufactured housing? Well,
2 not trailers, no. I don't think so.

3 BY MR. SIMPSON:

4 Q Do you know what the difference between a
5 trailer and a manufactured home is?

6 A Well, there's some rather elaborate
7 manufactured homes which are compartmentalized, and
8 you just bring them into the site and you pick them up
9 and set them in place.

10 Q Can manufactured homes be constructed to
11 local building codes?

12 A You've got to follow the HUD code.

13 Q Is there ever a setting when you can use a
14 local building code instead of the HUD code?

15 A Probably, if it exceeds the HUD code.

16 Q Do you know what an AC Letter is?

17 A An AC Letter? Atlantic Coast Conference. I
18 don't know.

19 Q Have you ever asked for or obtained an AC

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20 Letter?
 21 A What is it?
 22 Q Alternate Construction Letter.
 23 A Oh, okay. No, I have never asked for one.
 0090
 1 Q Do you know any design challenges with
 2 regard to (b)(2) walls?
 3 A Design challenges to (b)(2) walls? I don't
 4 know, but I would imagine they could exist.
 5 Q Do you have the HUD code in front of you?
 6 A Yes, I do.
 7 Q Would you go to (b)(2), please.
 8 A 504(b)(2)?
 9 Q Yes, sir.
 10 A Okay. Yep, unventilated wall cavities.
 11 Q Have you ever used the formula set forth in
 12 (b)(2) in designing any walls in your career?
 13 A No. I've used the formula before but not to
 14 design anything.
 15 Q This particular formula?
 16 A Yes. You get some crazy results out of it,
 17 too, sometimes.
 18 Q What do you know about the waiver?
 19 A Well, what do you want me to know about the
 20 waiver?
 21 Q Do you know anything about its history or --
 22 A I think the history of it -- I don't know
 23 the history of it, but I surmise from what I've read
 0091
 1 that the industry has had problems and that, as a
 2 result of those problems, HUD has given them an
 3 opportunity to try new things, new methods, new
 4 materials, and it's spelled out in the specs in the
 5 HUD code here that they are more than welcome to try
 6 new things as long as they perform.
 7 Q You don't have any specific familiarity with
 8 the waiver, correct?
 9 A No. I've never applied a waiver. I've
 10 never . . .
 11 Q Do you know about any problems or design
 12 challenges with the waiver?
 13 A I don't know enough about the history of it.
 14 There may have been.
 15 Q Do you know if HUD has ever criticized the
 16 waiver, its own waiver?
 17 A I really don't know. They may have.
 18 Q Do you know if HUD has ever criticized
 19 (b)(3) walls?
 20 A I don't know that they have or not, but
 21 something might show up in the dirty details of trying
 22 to do that.
 23 Q Explain to me in as complete a sense as you
 0092
 1 can, from a scientific standpoint, how the walls in
 2 the Murphy home are accumulating excess moisture.
 3 Explain to me the physical/chemical processes as if
 4 you were teaching a Ph.D. course.
 5 A No, this is high school and introductory
 6 course physics, which I taught for about five years.
 7 Let's see. It's a -- I guess it would be in the -- it
 8 may be for five or six months of the year, at least,
 9 in that climate down there, you're going to have a
 10 continuous situation where you got hot temperatures,

kondnerdr.txt

11 high humidity, and the people want to cool down, so
12 they got air conditioning going.

13 And in this Murphy house where you got the
14 vinyl, the hot air is going to come through the vinyl,
15 it's going to go through the wallboard, through the
16 insulation. It's going to hit on the back. It's
17 going to condense, it's going to run down and it's
18 going to keep doing this, and it's going to
19 accumulate. And over a period of time the mold is
20 developed, the mold has accumulated, the moisture
21 accumulates. It starts affecting the structural
22 integrity of the gypsum wallboard, and it continues.
23 It continues unless somebody does something about it,

0093

1 and it gets progressively worse and worse.

2 Q Do you know what a cyclometric chart is?

3 A A cyclometric chart?

4 Q Cyclometric chart.

5 A I'm not sure what you're defining there. I
6 may know it as something else.

7 Q Do you know how the hot air is going to get
8 inside the wall, as your explanation just posited?

9 A Well, what happens is things want to
10 neutralize. Heat goes to cold, okay, and when that
11 happens with a situation that you got, then you get
12 condensation, because you're cooling down all that
13 warm hot air which holds moisture vapor, water vapor,
14 and in this house I think that's the process.

15 Q I think you testified -- and correct me if
16 I'm wrong -- that the hot air from the outside gets
17 into the wall cavity. What I'm trying to figure out
18 is: Based on what you know about the design of this
19 wall, where is it getting in and how is it getting in?

20 A It's getting in -- it's got vinyl siding on
21 it, I believe this one has, and that's not airtight
22 and it's not sealed, so that air gets in there.

23 Q Does the sheathing play any role in keeping

0094

1 the air out?

2 A Well, that's rather porous. The air can get
3 through it. It's not continuous. You know, you've
4 got joints and everything in it.

5 Q Do you know where the joints are? Are they
6 in the center? Do they hit the studs? Do you know
7 anything about that?

8 A Well, they probably do. No, no.

9 Q Do what?

10 A No, you want to nail them on the studs.
11 You're not nailing not on the edge. I really don't
12 know what the layout of the pattern is if that's what
13 you're asking.

14 Q Well, you said the air is getting in the
15 wall, but you don't seem to know what the wall design
16 is. I'm just trying to figure out the basis of your
17 opinion.

18 MR. PELS: Objection.

19 THE WITNESS: Because the wall materials are
20 more permeable, and they may be the permeability
21 of 10, 15, 20, something on that order of
22 magnitude, or greater. Now, that air is going to
23 work its way through there.

0095

1 BY MR. SIMPSON:

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2 Q Do you know what the permeability is of
3 blackboard is?

4 A Offhand I don't know. I would expect it to
5 be maybe somewhere in the 15 area, 15 perm, something
6 like that.

7 Q Do you know what the permeability of OSB is?

8 A Something on that order of magnitude, but I
9 can look it up for you, which is what I did, and it's
10 in the literature. You can find it right in that
11 literature.

12 Q You said heat or hot goes to cold, right?

13 A Yeah.

14 Q Can you explain to me in any more scientific
15 terms what that process is.

16 A What that process is?

17 Q Can you relate it to any law, physical or
18 otherwise, chemical property, any kind of -- "heat
19 goes to cold" doesn't sound very scientific.

20 A You may have certain pressure effects and
21 you may get into Boyle's Law and those kind of things.
22 You would get into pressure effects. After all,
23 that's what our weather is all about anyway, isn't it?

0096

1 Q I'm just wondering what physical law you're
2 describing when you say "hot goes to cold."

3 A Well, the physical phenomena is one of
4 trying to reach a norm, and so therefore if I had, if
5 I had the wall, one part of the wall cold and another
6 part hot, you would get a temperature gradient, and
7 that gradient -- and you'd get a transfer of heat from
8 one part to another.

9 Q I'm just wondering if you can relate that
10 statement, "hot goes to cold," to a specific physical
11 law. You mentioned Boyle's Law, thermodynamics,
12 diffusion. Can you relate that to any one of those
13 standards?

14 A Well, heat would diffuse, like the air does.

15 Q Without guessing, can you tell me what
16 physical law --

17 A I don't offhand know a particular law that
18 you're looking for. I may know it, but I don't
19 recognize what you're looking for.

20 Q Would you agree with me that the dewpoint
21 has to be reached before condensation can be formed?

22 A Do you want to know about the dewpoint?

23 Q Well, let's see if we can get this question.

0097

1 You said hot goes to cold, and I was wondering,
2 without guessing, if you can relate that to any
3 specific scientific law or principle.

4 A I don't know what you're looking for there,
5 but you did mention dewpoint. Hot air holds a lot of
6 water vapor, more than cold air.

7 Q Sir, can you relate the "hot goes to cold"
8 principle to any known scientific standard or
9 principle or law?

10 MR. PELS: Objection.

11 You can answer.

12 THE WITNESS: Well, what you're asking -- I
13 don't know what particular law you're looking
14 for, but the idea, the concept is that you get a
15 thermal gradient, you get a thermal gradient and
16 you get a transfer of heat from the high heat to

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17 the low heat, and you get a flow that takes
18 place, just like you would if you had a hydrolic
19 condition and you had a high hydrolic head and a
20 hydrolic gradient, you would get a flow of water.
21 Simple as that.

22 BY MR. SIMPSON:

23 Q Do you know what law that is?

0098

1 A I don't know what law you're looking for.

2 Q What law that goes with hot goes to cold.

3 A Hot goes to cold. That's probably a
4 thermodynamic law.

5 Q Don't know which one, if it is?

6 A I don't recall it. I don't recall.

7 Q Can you tell me for the record what Boyle's
8 Law of Gas is?

9 A It has to do with pressures. If you heat a
10 gas, the pressure increases. If you cool it down, the
11 pressure decreases, and there is a relationship
12 between the pressures.

13 Q Do you know those formulas -- without
14 looking them up, do you know those laws or principles?

15 A I don't remember that. Hell, that's been 50
16 years ago.

17 Q Haven't looked at it since graduate school?

18 A I haven't looked at it for a long time.

19 Q Does Boyle's Law play any part in this case?

20 A It probably does.

21 Q But you don't know?

22 A I'm not sure what part it plays.

23 Q Do you agree with this statement? "Before

0099

1 condensation can form inside the wall of the Murphy
2 home, the dewpoint has to be reached."

3 A That's correct, because the dewpoint is the
4 temperature at which the vapor is saturated. So in
5 order to get it condensed, it's got to saturate. And
6 you can get that, you can change that dewpoint two
7 ways. You can either add moisture or you can change
8 temperature or you can do both.

9 Q Do you have a judgment as to how many days
10 the dewpoint was reached in the history of the Murphy
11 home such that it would cause condensation?

12 A No, I don't know how many days it is, but
13 there's water in there, so there was enough.

14 Q How much is enough to get that much water?

15 A I really don't know how much it takes to get
16 to 25 to 40 percent in there.

17 Q Do you have a judgment as to how many days
18 the dewpoint was reached in the Murphy home to cause
19 it to have water in the walls?

20 A Probably quite a few days, because it's a
21 hot humid climate and people want to live comfortably,
22 so they have air conditioning on.

23 Q What's your judgment? How many days?

0100

1 A I don't know.

2 Q Would it be more than a hundred days?

3 A I would hesitate to guess.

4 Q You'd just be guessing?

5 A Probably.

6 Q If it was fewer than 15 days in the whole
7 history of the home, would that surprise you?

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8 MR. PELS: Objection.
 9 Don't answer unless you know.
 10 THE WITNESS: I don't know.
 11 MR. SIMPSON: Jon, that's a hypothetical.
 12 He can answer that.
 13 BY MR. SIMPSON:
 14 Q If it were fewer than 15 days,
 15 hypothetically speaking, would that surprise you?
 16 MR. PELS: Objection. Can you clarify? Are
 17 you talking about the mean or the high?
 18 MR. SIMPSON: The mean.
 19 MR. PELS: Okay, you can answer if you know.
 20 THE WITNESS: I don't know, but I would
 21 think that it would be higher than that.
 22 BY MR. SIMPSON:
 23 Q But you have no judgment as to how many days
 0101 it would take?
 2 MR. PELS: Objection; asked and answered.
 3 THE WITNESS: No, it would be strictly a
 4 guess.
 5 BY MR. SIMPSON:
 6 Q Other than your "hot goes to cold" premise,
 7 is there any other scientific law of nature or effect
 8 going on here that's causing this issue?
 9 A Simply condensation of water. That's all it
 10 is. It's as simple as that.
 11 Q Anything else?
 12 A No. That's your issue.
 13 Q Do you have any experience or knowledge as
 14 to how gypsum dries?
 15 A You mean when it's wet like this?
 16 Q Yeah.
 17 A I would think that it would tend to -- from
 18 my personal experience, which is not too extensive,
 19 with gypsum deteriorating, I would think that it would
 20 tend to sort of slake off, dust off.
 21 Q Well, if you get gypsum wet --
 22 A It's going to tend to fall apart, yeah.
 23 Q Well, here's my question: If gypsum gets
 0102 wet and then it's allowed to dry, does it retain all
 2 of its original vitality and strength once it dries?
 3 A No.
 4 Q Are you guessing, or do you know?
 5 A Based on my experience, no, you're not going
 6 to -- you've changed the material.
 7 Q Do you know any application where gypsum is
 8 supposed to get wet?
 9 A Well, I don't know whether you'd call it the
 10 same chemical formula, but when you spackle you're
 11 certainly putting on a material which is -- I don't
 12 know how much gypsum is in it, but you're putting it
 13 on wet and it's drying and you're taping over it, and
 14 then you're smoothing it out and sanding it down.
 15 That's putting up wallboard.
 16 Q Are you familiar with any specific
 17 application of gypsum that requires the introduction
 18 of water?
 19 A Only if you're trying to make some sort of a
 20 paste out of it and put it in an opening or a rough
 21 surface or something like that.
 22 Q Are you personally familiar with any gypsum

kondnerdr.txt

23 standards?

0103

1 A I may have seen them at one time or another,
2 but I don't recall them.

3 Q Do you know what normal fungal ecology is?

4 A What was that again?

5 Q Normal fungal ecology.

6 A Well, that would have to probably be the
7 growth of fungi.

8 Q Do you know anything more than that?

9 A I don't know. I'm not an expert in that.

10 Q Where is the Murphy home experiencing a
11 problem?

12 A Within the walls.

13 Q Which ones?

14 A The ones that have the vinyl coating on
15 them.

16 Q Can you be any more specific.

17 A Well, I'd have to go into Bonney's and
18 Parks' report and try to find out which walls are
19 which. They would be basically the exterior walls.

20 Q Without rereading those reports, do you have
21 any judgment as to which sections of the home are
22 better or worse?

23 A I'd have to go back and look at Parks'

0104

1 report.

2 Q What else can cause a wall to get wet?

3 A You mean inside, behind the vinyl?

4 Q Well, the exterior walls, yeah. What other
5 things can happen to a wall that might cause the
6 presence of moisture to be in a wallboard?

7 A Well, if you lost part of your vinyl
8 covering on the outside and the wind beat the water
9 in, it probably would -- but we're not talking about
10 that kind of thing. We're talking about water vapor.

11 Q Do you know any history of this home
12 relative to storms?

13 A No, I don't.

14 Q Did you question the homeowners at all?

15 A I never talked to them.

16 Q What about a bulk water leak; do you know
17 what that is?

18 A A bulk water leak?

19 Q Yes.

20 A I would think that that would be free water
21 that's leaked into the house somewhere from maybe a
22 pipe broken or a leak in a roof or something like
23 that. You're talking about bulk water. You're not

0105

1 talking about water vapor.

2 Q Do you know whether any pipes have broken in
3 this home?

4 A No, I don't.

5 Q There is really no way to look at a piece of
6 gypsum and tell whether it's had a water leak or
7 condensation or any other kind of water intrusion, is
8 there?

9 A Well, usually you can see a difference in
10 color.

11 Q What if you see a line in the gypsum that's
12 horizontal to the floor that goes on for about four
13 feet like a high water mark; have you ever seen that?

kondnerdr.txt

14 A I've seen -- I don't know whether I've seen
15 it with -- well, if you get flooding, you would see
16 the line of demarcation, how far the water came up.
17 Q Do you know whether this home has that?
18 A I haven't been down there. I haven't seen
19 it. I don't know.
20 Q Do you know whether Mr. Murphy complained
21 about a roof leak to his insurance company?
22 A I don't know. I have no knowledge of it.
23 Q Could a roof leak cause water in a wall?

0106

1 A It could, but not throughout the house, I
2 don't think. I think it would be concentrated in one
3 particular area.
4 Q Do you know whether Mr. Murphy has testified
5 whether he's had pipes burst?
6 A I'm not aware of it one way or the other.
7 Q So the fact is, sir, you can't rule out
8 plumbing leaks as a cause for condensation in the
9 walls, can you?
10 MR. PELS: Objection.
11 THE WITNESS: I think so, because they would
12 be concentrated in a particular small area. This
13 seems to be throughout the structure.
14 BY MR. SIMPSON:
15 Q But you're relying on Mr. Parks?
16 A I'm relying on Mr. Parks.
17 Q I will tell you that Mr. Murphy has
18 testified that he had water leaks in both bathrooms.
19 Are you aware of that?
20 A I'm not aware of that.
21 Q Could that affect the moisture reading and
22 mold concentrations in those walls if he had pipes
23 burst?

0107

1 MR. PELS: Objection.
2 You can answer.
3 THE WITNESS: Well, if he had pipes burst,
4 then he would have had to have it repaired, and
5 if he had to have it repaired, they would have
6 been exposed, so he probably would have aired it
7 out pretty good.
8 BY MR. SIMPSON:
9 Q Well, assuming he just fixed the pipe and
10 they didn't do anything to the gypsum and it got wet,
11 that could account for moisture and mold, couldn't it?
12 MR. PELS: Objection; form and foundation.
13 THE WITNESS: It would tend to be localized.
14 BY MR. SIMPSON:
15 Q But you don't know where the leak was?
16 A I don't know that there was a leak. It was
17 all hypothetical.
18 Q Have you ruled out anything with regard to
19 setup that could be causing condensation or mold in
20 this home?
21 A Not in the walls. Conceivably something
22 like that could affect probably the floors.
23 Q Have you read Southern Energy's installation

0108

1 manual?
2 A I've seen it. I don't know that I've read
3 it or studied it.
4 Q Are you personally familiar with Alabama's

kondnerdr.txt

5 setup code?

6 A No, I'm not.

7 Q Do you know whether the Murphy home violates
8 the installation manual of Southern Energy?

9 MR. PELS: Objection; outside the scope,
10 form, foundation.

11 You can answer.

12 THE WITNESS: Does it violate the what now?

13 BY MR. SIMPSON:

14 Q The installation manual, the requirements in
15 the installation manual for setup. Do you know
16 whether the home complies or does not comply with the
17 installation manual?

18 A I don't -- I've never been down there. I
19 haven't even looked at it.

20 Q Do you even know how this home is set up?

21 A How it is set up? Well, I've seen maybe 40
22 or 50 or 60 or 70 of them off and on, and I assume
23 that they've set it up the way people normally set

0109

1 them up.

2 Q Do you know whether this home has vinyl
3 skirting?

4 A I believe I saw it in the photograph.

5 Q You think it does?

6 A I think so, but I can take a look.

7 MR. PELS: will you let him look at the
8 report?

9 MR. SIMPSON: I just wondered what he knows.

10 THE WITNESS: what about it? I can look at
11 the report. It doesn't do you any good.

12 (Discussion was held off the record.)

13 THE WITNESS: One of these has got a
14 photograph of it, I do believe. Maybe the
15 furnace piece is gone or something. It usually
16 has a photo in front. It would be probably in
17 his then, because he usually checks that off.
18 Let me see.

19 MR. PELS: Take your time.

20 THE WITNESS: The photos are gone. The
21 photos would show it.

22 BY MR. SIMPSON:

23 Q Dr. Kondner, may I ask what you're looking

0110

1 at?

2 A I'm looking at Bonney's report, but the
3 photos are not here.

4 Q Is it a fair statement to say you don't know
5 how this home is set up, because you can't see a
6 picture of it?

7 A I can't see the picture of it here, but at
8 the time I had his report there was photos in it.

9 MR. PELS: And for the record, we have a
10 photocopy. I don't think we have the original or
11 any of the photos with it.

12 BY MR. SIMPSON:

13 Q Do you know whether your report --

14 A Maybe I've got it. Hold on. Let's see.

15 I got photos in Ford, but I don't have
16 photos on the other, and I think I had them. But the
17 photos would show it, and I don't recall and I don't
18 think Bonney has x'd it out in his report, I didn't
19 see it, but it probably has some kind of skirting

kondnerdr.txt

20 around it.

21 Q Okay. Have you ruled out any problem with
22 setup to form your opinions?

23 A Setup? For the moisture?

0111

1 Q Yes, sir.

2 A That would be basically -- a setup problem
3 would be something that might affect the floors, but I
4 don't think it would affect the walls.

5 Q You don't think there is any potential setup
6 problem that could affect condensation in walls or
7 mold in the home?

8 MR. PELS: Objection; form and foundation.
9 You can answer.

10 THE WITNESS: I think the primary thing with
11 the setup is that you get water underneath, and
12 it goes up and affects the floorboards. Then
13 your floors swell and move and crack and distort
14 things, but generally it doesn't affect the
15 walls.

16 BY MR. SIMPSON:

17 Q What's a belly board?

18 A A Bailey board or belly board?

19 Q Belly board.

20 A Oh, belly. I thought you were saying
21 Bailey. That's the bottom -- the board underneath,
22 the bottom piece.

23 Q What's it made of in the Murphy home?

0112

1 A I didn't see it. I'd have to look at Bonney
2 to see what he says about it.

3 Q Is it made of wood?

4 A It's made of -- I don't know. It's probably
5 made out of a compressed fiber-type material.

6 Q Do you know whether there's any kind of
7 moisture problem under the home?

8 A I'd have to look at his report again. I
9 think -- I think it's -- I think he's got the vinyl
10 down underneath there or the plastic down underneath
11 there, so he's got a vapor barrier in there. I
12 believe it said that in there.

13 Q Dr. Kondner, if the home is performing
14 correctly in the crawlspace, should you see water
15 marks on the 8 X 16 blocks?

16 A If it's performing correctly?

17 Q Yes. In the crawlspace should you see water
18 marks on the blocks?

19 A Well, it depends. That could be a siting
20 problem and you could have had flooding in there, but
21 it depends on -- it obviously would be a water flow
22 problem. Water would get into it. Your ground
23 wouldn't be properly sloped, but that doesn't -- that

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1 might affect your floors to some extent, but that's
2 not going to affect your walls.

3 Q Is cross-ventilation important in a
4 crawlspace?

5 A Yes, you should have adequate ventilation,
6 and I think there is a spec on that, too.

7 Q Do you know what the cross-ventilation
8 standard is?

9 A I don't recall what that is. He's probably
10 got it in here, I think. I think I read it in here,

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11 so many square feet.
 12 MR. PELS: For the record, he's referring to
 13 Mr. Bonney's report.
 14 BY MR. SIMPSON:
 15 Q I just want to know what you know, not
 16 necessarily what he knows.
 17 A The only thing I know is what's in this
 18 report about the house, and I haven't memorized it.
 19 So if you're testing me on memory, watch out. My
 20 memory is not that good on this.
 21 Q How many days does it take for a normal
 22 manufactured home to be built from scratch?
 23 MR. PELS: Objection.

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 1 THE WITNESS: Depends on how fast you work.
 2 BY MR. SIMPSON:
 3 Q I'm just talking about in the industry. Do
 4 you know the normal time it takes to build a home?
 5 A No, I don't.
 6 Q Do you know whether it's days, weeks or
 7 months?
 8 A I don't, I don't know.
 9 Q Don't have a clue?
 10 MR. PELS: Objection.
 11 THE WITNESS: Don't have a clue.
 12 BY MR. SIMPSON:
 13 Q Sir?
 14 A No, I don't know.
 15 Q Have you looked at any of the documents in
 16 Southern Energy's file in rendering your opinion?
 17 A Documents in Southern Energy's file? Only
 18 if there were some documents in the literature that we
 19 had that came from Southern Energy, and that name
 20 sounds familiar for some reason or another.
 21 Q Do you recall specifically reading any
 22 Southern Energy documents in rendering your opinion?
 23 A I've seen that name on some documents

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 1 before, but I don't know. I think there is one. I
 2 think I did see one, but I don't recall it. It's in
 3 that massive pile of whatever came from the
 4 literature.
 5 Q Doctor, do you know how long the
 6 manufactured housing industry has been using
 7 vinyl-coated gypsum?
 8 A No, I don't.
 9 Q Do you think all the homes ever built with
 10 vinyl-coated gypsum sited in the humid and fringe zone
 11 are failing or have failed?
 12 MR. PELS: Objection; form and foundation.
 13 Answer if you have an opinion.
 14 THE WITNESS: I don't know, and I --
 15 MR. SIMPSON: Let's quit the coaching, Jon.
 16 MR. PELS: I objected on form and
 17 foundation.
 18 MR. SIMPSON: That's where you should have
 19 stopped.
 20 (Discussion was held off the record.)
 21 THE WITNESS: I didn't know that before, but
 22 now that you noted that, I'll keep tabs on it.
 23

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 1 BY MR. SIMPSON:

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2 Q Mr. Pels is a very fine lawyer. I just want
3 to keep this between the lines if we may.

4 A What; the 40-yard line?

5 Q That's right.

6 A I forgot the question. What was it again?

7 Q Do you have an opinion as to whether all the
8 homes built by the industry with vinyl-coated gypsum
9 are failing?

10 A I doubt it, because you have statistical
11 variation, and I don't give a damn what you're
12 producing or what you're doing. You usually have
13 statistical variation, some good, some bad, some
14 indifferent. So I suspect that there are a number of
15 them out there, and there's probably a reasonable
16 number, but doesn't the industry police itself?

17 Q So you don't know how many are failing?

18 A I don't know how many are failing or have
19 failed.

20 Q Well, what would you say is the difference
21 between a home that's failing and not failing? How
22 could you discern one from the other?

23 A Well, I think if you -- this is where a

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1 person like Bobby Parks comes in handy. I mean he
2 could go in and he could perform his services, and I
3 think then you would have a better handle on the
4 number that are failing and have failed and those that
5 are not failing yet.

6 Q But you would agree with me that not all of
7 them are failing?

8 MR. PELS: Objection.

9 THE WITNESS: I would be shocked if you told
10 me that somebody's done a study and all of them
11 are failed. I would be shocked.

12 BY MR. SIMPSON:

13 Q Well, do you know what variables account for
14 one that would fail versus one that wouldn't fail?

15 A Well, maybe such things as sealing up the
16 outside. Other variations on the wall, maybe ones --
17 instead of the vinyl one there, it's a, it's a tape
18 job. It's more permeable than the others. Oh, you're
19 talking about just with vinyl, all of them with vinyl.

20 Q Yeah, I'm just wondering what variables
21 would permit a home to not fail if it had vinyl.

22 A Well, I don't know. There might be some
23 kind of a ventilation system that somebody's put in

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1 somewhere.

2 Q Well, this particular home, do you know
3 what's causing it to fail or not to fail?

4 A This particular home?

5 Q Yes.

6 A It's that vinyl coating on the inside of
7 the -- the living side of the wall, wallboard.

8 Q But you just said that some homes with vinyl
9 on the inside of the home don't fail.

10 A They might not, they might not, but you
11 referred to this one specifically just now. Before,
12 you were talking with about in general.

13 Q What makes this one different from ones that
14 don't fail?

15 A What makes it different?

16 MR. PELS: Objection.